IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.89 OF 2006
IN
NOTICE OF MOTION 4028 OF 2005
IN
SUIT NO.777 OF 1992

Smt. Geeta Gopilal Mangal & Ors....Appellants

Vs.

Sanghi Motors (Bom) Pvt. Ltd....Respondents

Mr. J. Rais, Senior Counsel i/b.Kiran Jain & Co., for the Appellants.

Mr. D.J. Mehta i/b. Divya Kant Mehta & Associate for the Respondents

CORAM: F.I. REBELLO &
ANOOP V. MOHTA JJ.
DATE : 17th April,2006

P.C.:

. This Appeal is directed against the order dated 22nd December, 2005 by which order the learned Judge refused to grant ad-interim relief as prayed for in the Motion, but however directed to fix royalty afresh.

2. In the Motion taken out the prayer clause sought by the Respondent was as under:-

> "That pending the hearing and final disposal of the suit the Defendants may be directed to handover quiet, vacant and peaceful possession of the suit flat being Flat No.11, on the 1st floor of the Building known as "Dar-ul-Mulk" situated at 26,Pandita Ramabai Road, Bombay-400 007,to the learned Court Receiver, High Court, Mumbai and the learned Court Receiver,High

Court, Mumbai may be further directed to put the Plaintiffs in use, occupation and possession of the suit flat s his agent without paying the Royalty or other charges or security."

There was no prayer clause atleast for enhancement of the royalty. Royalty was fixed based on the consent of the parties. In these circumstances in our opinion the learned Judge was not right in directing at the ad-interim stage to fix royalty afresh. Considering the above, the impugned order dated 22nd December, 2005 is set aside. Appeal accordingly allowed. In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J.)